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Attorney for Leslie Shipnuck and David Shipnuck.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CIRRUS EXPLORATORY SITES, L.P., a
Texas limited partnership,,
Plaintiff,

v.

FIRST AMERICAN CORPORATION, a
California Corporation, dba FIRST
AMERICAN TITLE INSURANCE
COMPANY; HORTON-SHIPNUCK
LIVING TRUST under agreement dated
July 18, 2000, a California trust, DAVID E.
SHIPNUCK, trustee, of the HORTON-
SHIPNUCK LIVING TRUST; LESLIE K.
SHIPNUCK, an individual; and Does 1
through 25, inclusive,,
Defendants.

Case No.: 3:07-cv-6459

**ANSWER TO UNVERIFIED
COMPLAINT.**

Judge Phyllis J. Hamilton

Complaint Filed: 12/26/2007

Defendants DAVID E. SHIPNUCK and LESLIE K. SHIPNUCK ("Defendants") file this
Answer to the Complaint of Plaintiff, CIRRUS EXPLORATORY SITES, L.P, as follows:

1. Defendants generally deny each and every allegation of Plaintiff's unverified
complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Neither Plaintiff's Complaint nor any of its individual causes of action states a
claim upon which relief may be granted.

1 SECOND AFFIRMATIVE DEFENSE

2 An absent person is necessary to the action. Further, that necessary person cannot be
3 joined, and that party is indispensable, requiring that, in equity and good conscience, the action
4 be dismissed.

5 THIRD AFFIRMATIVE DEFENSE

6 The parties to the action lack diversity of citizenship.

7 FOURTH AFFIRMATIVE DEFENSE

8 Venue in the current judicial district is improper.

9 FIFTH AFFIRMATIVE DEFENSE

10 To the extent that Plaintiff's claims are barred in whole or in part by the applicable
11 statutes of limitations, Defendant asserts that defense.

12 SIXTH AFFIRMATIVE DEFENSE

13 To the extent that Plaintiff's claims were already litigated and/or resolved in any prior
14 proceeding, Plaintiff's claims in this action are barred by reason of the primary right, res
15 judicata, and/or collateral estoppel doctrines. To the extent that Plaintiff have entered into
16 waivers or releases of any of the claims she purports to assert in this action, those claims are
17 barred by those waivers or releases.

18 SEVENTH AFFIRMATIVE DEFENSE

19 To the extent that Plaintiff failed or refused to make reasonable efforts to mitigate,
20 minimize or avoid their alleged damages, their claims for damages are barred, either in whole or
21 in part.

22 EIGHTH AFFIRMATIVE DEFENSE

23 To the extent that Plaintiff's claims and/or damages, and/or the claims and/or damages of
24 any purported class member, are barred by the doctrines of waiver, estoppel, unclean hands,
25 and/or laches, Defendant asserts those defenses.

26 NINTH AFFIRMATIVE DEFENSE

27 Any award to Plaintiff in this action would constitute unjust enrichment.

28 TENTH AFFIRMATIVE DEFENSE

1 Plaintiff has not stated a claim upon which declaratory or injunctive relief may be
2 granted.

3 ELEVENTH AFFIRMATIVE DEFENSE

4 This Court constitutes an inconvenient forum in which to hear this action, and this
5 action should be dismissed or transferred for the convenience of the parties and witnesses, and in
6 the interests of justice, pursuant to the doctrine of forum non conveniens or 28 U.S.C. §1404.

7 **PRAYER**

8 Therefore, Defendant respectfully requests that the court:

- 9 1. Enter judgment that the Plaintiff take nothing by its complaint;
10 2. Award Defendant costs incurred in defending against this action; and
11 3. Award Defendant any other relief to which Defendant is entitled.

12
13 DATED: Wednesday, March 26, 2008

14 _____/S/_____
15 John A. Kelly, Esq.
16 Attorney for Leslie Shipnuck and David Shipnuck.